

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

NATHANIEL KIBBY,

Plaintiff,

vs.

JIM SALMONSON, Warden–Montana  
State Prison–Deer Lodge,

Defendant.

CV-18-00104-H-BMM-JTJ

ORDER

On November 8, 2018, Nathaniel Kibby filed an “Emergency Petition” for a temporary restraining order and motion for a preliminary injunction. Mr. Kibby explained that he received a disciplinary citation in September 2018 for making a threat. He was found guilty and reclassified to a higher custody level within the prison. After he completed his disciplinary confinement, he was placed in administrative segregation where he was not permitted to retain the same amount of personal property he had previously. Some of his property was returned to him, and “[h]e was informed that the balance of his undelivered property would be discarded if not mailed out within 30 days.” (Petition, Doc. 2 at 2 ¶ 5.) Mr. Kibby asked the Court for a temporary restraining order to enjoin the destruction of his property because he cannot afford to ship it out. *Id.*

On November 13, 2018, this Court denied the request for temporary restraining order and required Mr. Kibby to file a complaint on or before December 13, 2018. Mr. Kibby was advised that if he did not file a complaint, the clerk would enter judgment in favor of Defendant Salmonsens and against Mr. Kibby. (Doc. 3 at 6.)

Mr. Kibby did not comply and instead filed a Petition to Reconsider the Order, a sworn declaratory affidavit and legal memorandum. (Doc. 4.) The Court denied the motion for reconsideration for failure to comply with the Court's Local Rules and because Mr. Kibby did not establish that the facts or applicable law were materially different from the facts or law presented in his previous motion. (Doc. 6.) Mr. Kibby was given to January 31, 2019 to file a Complaint. He did not do so and instead filed a Motion for Relief from Orders pursuant to Rules 46 and 60 of the Federal Rules of Civil Procedure. (Doc. 7).

The Court was clear in its January 7, 2019 Order that it would not reconsider the November 13, 2018 Order. (Doc. 6.) It was also clear when it instructed Mr. Kibby that if he wanted to proceed in this action he must file a complaint and if he failed to file a complaint this matter would be closed. (November 13, 2018 Order, Doc. 3 at 4; January 8, 2019 Order, Doc. 6 at 3.) Mr. Kibby has not complied with the Court's Orders.

ACCORDINGLY, IT IS HEREBY ORDERED THAT Mr. Kibby's Motion for Relief from Orders (Doc. 7) is DENIED. The Clerk of Court is directed to terminate all pending motions, enter judgment in favor of Defendant Salmonsens, and close this matter.

DATED this 30<sup>th</sup> day of May, 2019.



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Brian Morris  
United States District Court Judge

